

October 21st, 2019

Hon. Andrew Wheeler, Administrator
U.S. Environmental Protection Agency c/o EPA Docket Center
Mail Code 28221T
1200 Pennsylvania Avenue, NW Washington, DC 20460

Re: Updating Regulations on Water Quality Certification (Docket ID No. EPA-HQ-OW-2019-0405)

Dear Administrator Wheeler,

We, the undersigned organizations representing and serving Latinx communities across the nation, stand together in rejecting any propositions which will weaken protections for our water, health, and livelihoods. Compared to other Americans, Latinx communities across the country already suffer disproportionate health impacts due to inadequate regulation of water pollution. We stand together in opposition to this proposed U.S. Environmental Protection Agency (“EPA”) rule weakening regulations implementing Section 401 of the Clean Water Act (“CWA”).

The Section 401 water quality certification process allows state regulators and tribal communities to weigh in on projects which may harm local water quality as they apply for EPA permits. The justification for this proposed rule is that the 401 process is inefficient and that states and tribes are misusing the Section 401 process to block or significantly delay critical infrastructure projects that are in the public interest. Both of these justifications are patently false, and are excuses for a costly choice that would place the interests of private industry stakeholders over the health of frontline communities.

If EPA were interested in making the 401 process more efficient, the proposed rule could have adopted a wide-range of suggestions from organizations across the political spectrum who have written EPA on this issue including the National Tribal Water Council, the Western States Water Council, or the Association of State Wetlands Managers. EPA did not adopt suggestions from those organizations.

If EPA were interested in the public interest, in protecting the most vulnerable among us, they would have held meaningful conversations with tribal communities who depend on this authority to protect their water, about how to strengthen these regulations. Instead, they merely held one tribal hearing despite the disproportionate impact of this proposed rule on indigenous communities.

The certification process is even more critical to tribes than to states because, due to lack of resources, certification often provides tribes with the only significant input they have into the issuance of federal CWA permits, and those permits are the primary means for implementing water quality standards and ensuring the protection of water quality on tribal lands, especially from upstream polluters.

This proposal does nothing to represent the public interest. The proposed rule severely narrows the timetable for the entire complicated certification process, narrows what impacts may be considered by the certifying state or tribe, and gives EPA a veto over whatever decision a state or tribe arrives at. The

proposal is a very clear reflection of polluting industry priorities, and their intent to make it as easy as possible to obtain EPA permits for harmful projects like oil and gas pipelines and mining operations.

Rather than weaken the process by creating a final version of this proposed rule, we encourage EPA to conduct thorough, meaningful outreach to tribal communities who have often been stonewalled by the agency in their attempts to weigh in on projects through the 401 process. In northeastern Minnesota, the Fond du Lac Band of Lake Superior Chippewa's shared concerns about mining projects upstream which were seeking federal permits for the expansion of current and new discharges despite existing discharges already exceeding state and tribal water quality standards. EPA ignored the Band's requests for notification of such proposed permits, for public hearings on potentially harmful projects. EPA ignored direct requests from the Tribal Chairman. EPA has, in the past, effectively cut off authorized tribal communities ability to invoke Section 401 by deferring the review authority to other federal agencies such as the U.S. Army Corps of Engineers. Rather than being weakened, regulations implementing Section 401 must be strengthened to guarantee authorized Tribes can review projects and provide final say over those that would negatively impact their water quality and way of life.

Sincerely,

Earth Ethics, Inc.
Amigos de los Rios
Nuestra Tierra Conservation Project
Colorado Latino Forum
The Praxis Project
GreenLatinos
National Latino Farmers & Ranchers Trade Association
Defiende Nuestra Tierra
Faith in Place Action Fund
National Hispanic Medical Association
Rural Coalition
Mujeres de la Tierra
The Rose Foundation